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Local Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SIERRA CLUB, et al.,)	Case No. 3:08-cv-01409-WHA
)	
Plaintiffs,)	
)	
v.)	DECLARATION OF RICHARD E.
)	CARGILL
STEPHEN JOHNSON, et al.,)	
)	
Defendants,)	
)	
and)	
)	
SUPERFUND SETTLEMENTS PROJECT, et al.,)	
)	
Defendant-Intervenors.)	

DECLARATION OF RICHARD E. CARGILL
 (Case No. 3:08-cv-01409-WHA)

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1 I, RICHARD E. CARGILL, declare and state as follows:

2 1. I am over the age of 21 and competent to testify to all matters contained herein.

3 2. I have been a member of the Sierra Club since 2002.

4 3. I reside at 5976 Hygiene Road, Longmont, Colorado 80503. I have lived at this
5 address since 1997 along with my wife Barbara.

6 4. The CEMEX cement plant is located at 5134 Ute Highway, Lyons, Boulder
7 County, Colorado. CEMEX acquired Southdown in 2000. The cement plant has been
8 operating in Boulder County Colorado since 1968. Activities at the plant include raw materials
9 mining, sales and transport of finished product, raw material handling and processing, kiln
10 operation, clinker storage, finish grinding, cement storage, and cement packaging. My
11 residence is approximately 1.8 miles east of the cement plant. My knowledge of CEMEX
12 operations and history is derived from regulating agencies, review of CEMEX permitting
13 documents, statements made to me by CEMEX/Southdown staff, and my own direct
14 observations.

15 5. When I moved to my residence in 1997, I observed personnel from the cement
16 plant dumping waste product (Cement Kiln Dust ("CKD")) in an open field several hundred feet
17 from Hygiene Road. This area of Boulder County frequently experiences gusty wind
18 conditions. When the wind would gust, it would send this substance airborne, occasionally
19 causing white-out conditions along Hygiene Road. At other times, the wind would blow from
20 the west and blow the substance into the St. Vrain Valley carrying it east into residences and the
21 community of Hygiene.

22 6. I took photographs of these fugitive dust events in 1998 and contacted the
23 newspapers, the Boulder County Board of Health, the Colorado Air Pollution Control Division,
24 and the Colorado Division of Minerals and Geology (DMG). The newspapers did more than
25 one story about the dust events from this site, and these photographs were forwarded to
26 appropriate government agencies. Since the DMG is the government organization with
27 oversight in the matter of CKD, the inspectors visited the plant, and directed the company to
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1 stop dumping CKD in the open field and to use an abandoned quarry on its property for the
2 disposition of this waste product. The DMG is also responsible for inspecting this site for
3 ground water contamination and appropriate containment of CKD.

4 7. The DMG also directed the company to contain its CKD by applying water to the
5 waste during transport from the plant to the quarry. Then, the company was directed to install a
6 sprinkler system around the perimeter of the quarry to maintain a crust on the top of the CKD so
7 it would not be dispersed by the wind.

8 8. There were numerous occasions during this time from 1999 to 2000 when the
9 sprinkler system would be out of order for months either because of the weather, lack of spare
10 parts, and maintenance. When the sprinkler system was not operating, the wind would pick up
11 the CKD out of the quarry and disperse it throughout the community.

12 9. My wife and I often found white dust in our home, on our property, and we would
13 frequently find the dust on our automobiles in the morning. Clouds of white dust would blow
14 down the valley almost daily.

15 10. During this period, my wife and I would cough a lot, and we felt the dust was the
16 cause of our persistent coughing. I also learned from my neighbors that they experienced
17 similar problems. In fact, one neighbor kept the windows in her home closed and they had been
18 closed for 10 years because of her fear of the dust.

19 11. Residents felt helpless in dealing with the persistent dust problems, and
20 discussions with the plant manager at the cement plant were futile in getting any relief.
21 Community members met and organized the St. Vrain Valley Community Watchdogs in an
22 effort to publicize and document our problems with the dust events from the plant. (See
23 www.stvrainwatchdogs.org.) We posted photos of dust events on the website.

24 12. I, along with my neighbors, attended meetings (from 1998 to 2007) and submitted
25 public testimony to the Boulder County Health Department and the Colorado Air Quality
26 Control Commission. We expressed our concerns that without appropriate regulatory
27 inspections and actions, the cement plant would continue to ignore its neighbors' concerns
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1 about fugitive dust from the CKD disposal site and other dust sources at the plant. On August
2 8, 2002, I again notified the Division of Minerals and Geology in writing that the Division's
3 regulatory controls for the disposal of CKD were being ignored by the cement plant. Photos of
4 blowing CKD were also submitted to the DMG. I also forwarded this complaint and other
5 pertinent information to the U.S. EPA, Mailcode: 5305-G, 1200 Pennsylvania Ave., NW,
6 Washington, D.C. 20460, Attention Docket ID No. RCRA-1999-0011.

7 13. From 2000 to 2007, the Colorado Air Pollution Control Division has conducted
8 frequent unannounced inspections at the cement plant and has issued seven Notices of Violation
9 and a Compliance Order on Consent to the plant. Several of the violations relate to the handling
10 and mismanagement of CKD. This pressure from the State and on-going scrutiny of the plant
11 by the public and media has resulted in less frequent occurrences of dust events.

12 14. I am concerned that CKD has had a negative impact on our health. I am
13 concerned when my grandchild stays that he may be exposed to this substance. I am deeply
14 concerned that CKD may have contaminated the soil in my organic garden, entered the water
15 table and contaminated the water we drink and use from the shallow well on my property. My
16 property is down gradient from CEMEX, and the CKD is still contained in an unlined pit.

17 15. CKD has the chemical properties of cement, and is fine-grained, solid, and highly
18 alkaline waste removed from the kiln exhaust system by air pollution control devices. I do not
19 want this substance in my home, my lungs, my garden, or water supply.

20 16. If the U.S. Environmental Protection Agency required companies that generate
21 hazardous substances, like cement kilns, to provide adequate financial assurance to clean up the
22 pollution caused by their activities, then the cement kilns would have greater incentive to safely
23 manage and dispose of cement kiln dust without causing damage to human health and the
24 environment.

25 17. If the U.S. Environmental Protection Agency requires CEMEX to maintain
26 adequate financial assurance, I could be assured that the contamination caused to soil and water
27 by the CKD produced and disposed at the plant, would be cleaned up and would no longer
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1 threaten my family and degrade the environment.

2 18. I am very concerned that my community and other communities near cement
3 kilns, throughout the United States will be adversely affected by cement kilns and CKD because
4 EPA has failed to write regulations requiring adequate financial assurance.

5 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
6 and correct to the best of my knowledge. Executed this 2 day of September, 2008, at Lyons,
7 Colorado.

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10 
11 RICHARD E. CARGILL
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